



CENTER FOR  
FOOD SAFETY

April 13, 2018

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**SUBMITTED VIA ONLINE FOIA SUBMISSION FORM**

**RE: Freedom of Information Act Request**

To the United States Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) national non-profit public interest and environmental advocacy organization working to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. CFS educates consumers concerning the impacts of pesticides on the environment. Consistent with this mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552, CFS respectfully requests the following information:

**Any and all documents related to EPA's conditional registration decision for Enlist One (EPA Reg. No. 62719-695).<sup>1</sup>**

"All documents" includes but is not limited to all correspondence, minutes, memoranda, communications and/or other documents received from or given to other agencies, maps, plans, drawings, emails, reports, databases, and phone notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files currently or at any other time.

This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

**REQUEST FOR FEE-WAIVER**

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this

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<sup>1</sup> Available at [https://www3.epa.gov/pesticides/chem\\_search/ppls/062719-00695-20170131.pdf](https://www3.epa.gov/pesticides/chem_search/ppls/062719-00695-20170131.pdf).

**NATIONAL HEADQUARTERS**

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**CALIFORNIA OFFICE**

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request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”) Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

**I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.**

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

**A. The subject of the disclosure concerns “the operations and activities of the government.”**

The requested information pertains to correspondence regarding the EPA’s decision to conditionally register Enlist One under FIFRA section 3(c)(7)A). It is irrefutable that this action is a clearly identifiable operation of government. This disclosure will demonstrate to the public at large the nature of EPA’s decision-making in regards to its conditional registration of this pesticide product.

**B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.**

As discussed in the previous section, the present disclosure will provide the public a better understanding of the nature of EPA’s decision-making regarding conditional pesticide registrations under FIFRA. The requested documents and communications are not already public, and will help demonstrate to the public at large EPA’s analytic process, conclusions, and generally held knowledge concerning its pesticide registrations.

CFS is a nonprofit, public interest organization that empowers people, supports farmers, and protects the environment from the harms of industrial food production. CFS works to promote comprehensive and rigorous analysis of the potential impacts of pesticides on the environment under flagship U.S. health and environmental laws. With over 900,000 farmer and consumer supporters nationwide, CFS informs, educates, and counsels the public—via legal action, publicity campaigns, our website, our True Food Network, books and reports, and our

quarterly newsletter (Food Safety Now!) about the harm done to human health, animal welfare, and the environment by industrial agriculture. Through nearly two decades of involvement in technical analysis, environmental litigation, and policymaking as it relates to food and environmental impacts, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public. CFS puts out reports on a variety of topics, including genetically engineered foods, aquaculture, pesticides, food and feed additives, organic standards, and other topics that tend to be difficult for the layperson to understand without professional assistance. More specifically, CFS has been engaged in ongoing efforts to educate our members and the public about the harms of 2,4-D, the active ingredient in Enlist One. CFS is working on a new report on the agricultural uses of Enlist One. Accordingly, CFS is an effective vehicle to disseminate information on EPA's decision to register pesticide products like Enlist One under FIFRA.

Simultaneously, this FOIA will help CFS fulfill its well established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands.

## **II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO THE CENTER.**

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Specifically, CFS has been working on ongoing public reports and outreach regarding 2,4-D, the active ingredient in Enlist One. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture and the use of pesticides for agricultural purposes. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, CFS requests that this FOIA be classified within the EPA's fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact me to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to FOIA@centerforfoodsafety.org. Electronic materials are preferred but if records must be mailed, please send to the San Francisco address on the letterhead. Please call me at 415-826-2770 or email me at ksmith@centerforfoodsafety.org if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/ Kellan Smith

Kellan Smith

Legal Fellow

Center for Food Safety

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